

Final

**RHODE ISLAND SUPREME COURT
ETHICS ADVISORY PANEL
Opinion No. 98-09 Request No. 745
Issued April 9, 1998**

Facts:

The inquiring attorney is a former lawyer for the Department of the Attorney General and is now in private law practice. While the lawyer was employed by the Attorney General, an individual informed him/her that the individual was a victim of an assault. The inquiring attorney advised the individual that prosecution of the crime was within the discretion of the local and state police departments, and referred him/her to those agencies. When the individual subsequently informed the inquiring attorney that the police departments had elected not to institute criminal proceedings in the case, the inquiring attorney advised the individual that he/she had the option of privately prosecuting the case against the alleged perpetrator. Thereafter, the individual engaged an attorney who instituted proceedings against the alleged perpetrator, but has since discharged that attorney. The individual has asked the inquiring attorney to represent him/her in the case.

Issue Presented:

The inquiring attorney asks whether the Rules of Professional Conduct permit him/her to represent the individual in the case after having had conversations with him/her during his/her employment at the Department of the Attorney General.

Opinion:

Rule 1.11(a) does not prohibit the inquiring attorney from representing the individual in a private lawsuit against the perpetrator, as his/her earlier conversations with the individual did not constitute substantial participation in a matter as a public employee.

Reasoning:

Rule 1.11(a) entitled "Successive Government and Private Employment" states in pertinent part:

(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated as a public officer or employee. . . .

Paragraph (e) of the Rule 1.11 defines the term "matter" to include:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy,

investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

Under Rule 1.11(a), a former government lawyer is disqualified from representing a private client in a matter in which the lawyer participated personally and substantially as a public employee. See Fla. Bar Prof. Ethics Comm. Op. 72-41 (1993); Nassau County Bar Assoc. comm. on Prof. Ethics Op. 93-35 (1993); R. I. Sup. Ct. Ethics Advisory Panel Op. 96-32 (1996). The Panel is of the opinion that in the instant inquiry, the inquiring attorney's conversations with the victim while he/she was a government lawyer do not constitute substantial participation in a matter which would disqualify him/her from the private representation of the victim against the perpetrator. The alleged incident was not the subject of a criminal investigation or prosecution by the Department of the Attorney General. Having determined that neither the Attorney General nor the police departments were pursuing criminal prosecution of the alleged assailant, the inquiring attorney advised the victim of his/her remaining options, including private prosecution of the perpetrator. Directing an individual to alternatives to governmental criminal prosecution under these facts was a reasonable adjunct to the inquiring attorney's position, but did not constitute participation in a matter sufficient to disqualify him/her under Rule 1.11(a) from now representing the victim in a lawsuit against the perpetrator.

The Panel concludes that the representation is permitted under the Rules of Professional Conduct. The Panel's guidance is restricted to interpretations of the Rules and does not extend to issues of the State Ethics Code or any other rules, regulations or laws that may have a bearing on the issue raised by this inquiry.